

No. 10-17-00029-CV

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SHARRI ROESSLER
Clerk

SANDRA K. BULLARD
Appellant

v.

REBECCA ANN STIFFLEMIRE AND LARRY STIFFLEMIRE
Appellees

On appeal from the 21st District Court
of Burleson County, Texas
Trial Court Cause No. 28,310

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STATEMENT OF FACTS

A. Earnest Money Contract for Bullard's Purchase of Property.

At issue in this case is a 32.021 acres tract of land located in the J. M. Sanches League, A-55, in Burleson County, Texas (the "Property"), owned by Rebecca Stifflemire. (2 RR 4, 12; CR 81). In January, 1994, Bullard and the Stifflemires entered into an Earnest Money Contract for Bullard's purchase of the Property (the "Earnest Money Contract"). (CR 81, 85-86). The total purchase price under that contract was \$100,000, including a \$10,000 cash payment and two real estate lien notes payable by Bullard to the Stifflemires. (CR 81, 85). The Earnest Money Contract was delivered to Caperton & Towslee Title Company, as escrow agent, along with a \$2,500 earnest money check from Bullard. (1 RR 16-18). The Earnest Money Contract fell through when Bullard was unable to come up with the money for the down payment required under the terms of that contract. (CR 81).

B. Contract for Deed

Following Bullard's failure to close under the Earnest Money Contract, Bullard and the Stifflemires entered into a "Contract for Deed," effective May 1, 1994 (the "Contract"). (1 RR 18; 2 CR 4-12). Under that Contract, the Stifflemires agreed to sell Bullard the Property for the total sale price of \$100,000, with the Stifflemires financing the entire purchase price, referenced in the Contract as the

“deferred principal amount.” (2 RR 4-5). The Stifflemires reserved, for themselves and their heirs and assigns, one-half of the Seller’s interest in and to all of the oil, gas and other minerals in the Property, along with all rights of ingress and egress for the purpose of mining, drilling, exploring, operating and developing the land for oil, gas and other minerals. (2 RR 4-5).

Under the Contract, Bullard agreed to make monthly payments of principal and interest, in the amount of \$643.72, on the first day of each month, beginning June 1, 1994, until May 1, 1995, at which time Bullard would make a cash payment of \$20,000, and sign a Real Estate Lien Note for the remaining balance. (1 RR 19-20; 2 RR 5). The Real Estate Lien Note was to bear interest at the rate of 9% per annum, payable in monthly installments of \$643.72 for a period of five years, at which time the entire unpaid balance of principal and interest would be due. (1 RR 19-20, 52; 2 RR 5). The Contract for Deed provided for an annual rate of interest on the \$80,000 “Deferred Principal Amount,” and 18% on matured, unpaid amounts. (2 RR 4). The Contract also required that Bullard pay the taxes and insurance on the Property. (1 RR 192; 2 RR 6).

The Contract provided that the Seller (the Stifflemires) would convey the Property to the Buyer (Bullard) by Warranty Deed with Vendor’s Lien, only “[i]f Buyer is not in default. (2 RR 5). Bullard understood that the Stifflemires were not obligated to provide her a deed to the Property until she finished making all

payments due under the Contract, and she would not acquire legal title to the Property until that time. (1 RR 47, 54). Bullard also recognized that she was supposed to pay off the entire amount of principal and interest due under the Contract as of May 1, 2000. (1 RR 48-49, 51).

C. Failure of Consideration.

Bullard took possession of the Property in June, 1994, for use as both her residence and a commercial ostrich-breeding enterprise. (1 RR 19, 26). Though still using the land for her benefit, Bullard failed to make the \$20,000 lump sum payment on May 1, 1995, as required by the Contract for Deed, and did not give the Stifflemires a Real Estate Lien Note for the remaining balance due under the Contract. (1 RR 20; 47). Nor did Bullard pay off the full amount of principal and interest due to the Stifflemires on May 1, 2000, per the Contract terms. (1 RR 51). In addition, Bullard never paid any of the ad valorem taxes due on the Property, as required under the Contract. (1 RR 22). Bullard acknowledges that she has not to this day made all of the payments due under the Contract. (1 RR 47, 59).

D. Parties' Dispute Regarding Payments Made for the Property.

To explain why she did not make the payments required under the Contract for Deed, Bullard claims that she spoke with Larry Stifflemire in May, 1995 and he told her not to worry about making the \$20,000 payment due under the Contract, because "he knew I had a lot of loss on the front end of this." (1 RR 20-21).

Bullard also testified that Larry Stifflemire told her not to worry about making the balloon payment that was due under the Contract in 2000. (1 RR 22). Bullard has no written documentation that she was excused from making the \$20,000 lump sum payment or the final balloon payment stipulated in the Contract. (1 RR 43, 56-57). Regardless whether she believed that the \$20,000 payment had been forgiven by the Stifflemires, Bullard knew that she was supposed to sign a Real Estate Lien Note for the balance due, and to pay off the entire amount of principal and interest due on the Property, on May 1, 2000, but she did not meet these obligations. (1 RR 51). She also admitted that she still has not made all of the payments due under the Contract for Deed. (1 RR 47, 59).

E. Rental of the Property to Bullard.

Larry Stifflemire testified that, when Bullard said she could not pay the \$20,000 that was due on May 1, 1995, he told Bullard she could just pay rent, for the same amount of \$643.72 per month. (1 RR 67-68). It was the Stifflemires understanding that, since the beginning of May, 1995, Bullard was leasing the Property from them. (1 RR 68). The Stifflemires' federal income tax returns show that they were reporting rental income each year from "Rent House, Caldwell, Texas," in the amount of \$7,725, corresponding to twelve months of payments at \$643.72 each. (CR 238, 242, 246, 253, 256, 259, 262; 2 RR 69). Bullard continued to make monthly payments in that amount through the time of trial; but

she admits that she has not made all of the payments due under the Contract for Deed. (1 RR 26, 47). The Stifflemires paid the property taxes due on the Property from 1994 through 2016. (1 RR 52; 2 RR 100-120).

F. Bullard Files Suit

Bullard became aware in October, 2014, that surveyors for XTO had entered the Property to survey for an oil well. (1 RR 27-29). Another crew from Eagle Ford Minerals came on the Property in April, 2015, to construct an easement across the Property. (1 RR 28-29, 32). In October, 2015, Frank Rodriguez, came on the Property to inspect it regarding his potential purchase of the Property. (1 RR 37, 71). At that time, Larry Stifflemire told Bullard that Frank Rodriguez was interested in buying the Property, but that he would give her first option to buy it. (1 RR 71). That is when Bullard decided to file suit against the Stifflemires, for breach of the Contract for Deed, and damages from entry onto the Property by third parties. (1 RR 37; CR 6-19).

The Stifflemires' Answer denied that the Contract for Deed was enforceable, due to failure of consideration, estoppel, laches and waiver. (CR 23-27). Bullard subsequently amended her petition to include a request for declaratory judgment regarding the enforceability of the Contract and the outstanding amount that she still owes under that agreement, as well as causes of action for fraud and for

damages under the Texas Property Code, for the Stifflemires' lack of statutory notices regarding the Contract for Deed. (CR 293-308).

G. Trial.

The case was tried to the court on December 16, 2016, and the court ruled in favor of the Stifflemires. (1 RR 1, 115). At trial, Bullard testified that she was not responsible for payment of the \$20,000 due to the Stifflemires in May, 1995, and that she had not paid off all amounts due under the Contract for Deed. (1 RR 39, 47). By Bullard's calculations, the balance due to the Stifflemires under that contract as of the time of trial was \$41,669. (1 RR 38). Notably, Bullard's calculations were based upon a 9% interest rate applied to some unknown amount, rather than the 18% interest rate applicable under the Contract for Deed to matured and unpaid amounts. (1 RR 50-51). Though Bullard acknowledged that the terms called for an 18% interest rate, she did not concede that the higher interest rate was applicable under the Contract terms. *Id.*

The trial court entered Final Judgement on January 17, 2017, holding that the Contract for Deed lapsed on May 1, 1995, and that as of May 1, 1995, the parties were subject to a month-to-month lease. (CR 310-311). The trial court entered its Findings of Fact and Conclusions of Law on March 8, 2017. (CR 371-373). Bullard remains in possession of the Property pending the outcome of this

appeal, and continues to make monthly payments of \$643.72 to the Stifflemires, pending resolution of this cause through appeal. (CR 368-369).

SUMMARY OF ARGUMENT

Cutting through the chaff of selected facts recited and legal arguments stated in Appellant's Brief, the crux of Bullard's position in this case is this: the trial court should have declared the Contract for Deed enforceable, but only as to those terms favorable to Bullard. Bullard admits that she did not make the \$20,000 lump sum payment due in 1995 under the Contract for Deed terms, did not sign the required Real Estate Lien Note in 1995, and did not pay off the balance of principal and interest owed on May 1, 2000, as required under the Contract; however, she now wants to hold the Stifflemires to their obligations under that agreement, all these years later.

Bullard argues that the Stifflemires were required to give her notice of her default pursuant to provisions of the Contract for Deed and the Texas Property Code, but ignores the Contract provision requiring that she pay 18% interest on matured and unpaid amounts owed by her. Bullard claims entitlement to an offset of the balance owed by her under the Contract, equal to one-half of the amount of income from minerals received by the Stifflemires over the years, without acknowledging that she is only entitled to a share of the minerals if, and only if, she pays all amounts due under the Contract and receives legal title to the Property.

Bullard acknowledges that she never paid any of the ad valorem taxes on the Property, as required under the Contract for Deed, but blames the Stifflemires for not asking her to meet that obligation under the Contract.

Bullard cannot have it both ways. Either the Contract for Deed failed in 1995 for lack of consideration paid by Bullard, and she has been leasing the Property since that time, or the Contract for Deed is still enforceable as to all its terms. If it is still enforceable, then all of the terms of the Contract for Deed apply, and Bullard owes the Stifflemires the total matured and unpaid balance of principal and accrued interest remaining due, according to all Contract terms, as well as the ad valorem taxes paid by the Stifflemires since 1994, without any offset for mineral income received by the Stifflemires.

Based on the record and the evidence at trial, the trial court correctly held that the Contract for Deed lapsed on May 1, 1995, because Bullard failed to make the \$20,000 payment required under the terms of the contract. In addition, the Contract is unenforceable because Bullard waived enforcement of the Contract, and is estopped from claiming a right to performance of the Contract, by her actions inconsistent with the Contract terms over the last twenty years. This Court should affirm the lower court judgment, either under the trial court's conclusions of law, or any correct legal theory supported by the controlling findings of fact.

ARGUMENT AND AUTHORITY

I. The Trial Court Correctly Concluded that the Contract for Deed was Unenforceable, as a Matter of Law.

The trial court correctly applied the law in its judgment that the Contract for Deed had lapsed and was no longer enforceable after May, 1995. The facts established at trial and in the record of the case clearly support the trial court's conclusions of law, and bar enforcement of the Contract as requested by Bullard. For these reasons, the trial court's judgment should be affirmed.

A. The standard of review.

Appellate courts review a trial court's conclusions of law *de novo*. See *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). Conclusions of law are upheld if the judgment can be sustained on any legal theory the evidence supports. *Waggoner v. Morrow*, 932 S.W.2d 627, 631 (Tex. App.—Houston [14th Dist.] 1996, no writ). Incorrect conclusions of law do not require reversal if the controlling findings of fact support the judgment under a correct legal theory. *Id.*; *Super Ventures, Inc. v. Chaudry*, 501 S.W.3d 121, 127 (Tex. App.—Forth Worth 2016, no pet.).

Whether the trial court correctly applied, or chose not to apply, the Texas Property Code, is a legal question reviewed *de novo*. See *Reliance Nat. Indem. Co. v. Advanced Temporaries, Inc.* 277 S.W. 3d 46, 50 (Tex. 2007) (holding whether mechanic's lien statute applied was legal question resting on existence of factual

basis required by statute). Legal questions that rest on a factual basis are reviewed *de novo*, while affording deference to the trial court's findings of fact. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 337 (Tex. 2011).

B. The Contract for Deed is unenforceable due to failure of consideration.

The trial court correctly concluded that the Contract for Deed lapsed on May 1, 1995, because Bullard failed to make the \$20,000 due under the contract that date. The failure of consideration promised in a written agreement constitutes a defense to enforcement of that agreement. *McGraw v. Brown Realty Co.*, 195 S.W.3d 271, 276 (Tex. App.—Dallas 2006, no writ). “Consideration” is a present exchange bargained for in return for a promise and consists of benefits and detriments to the contracting parties. *Roark v. Stallworth Oil & Gas, Inc.*, 813 S.W.2d 492, 496 (Tex. 1991); *McCoy v. Alden Industries, Inc.*, 469 S.W.3d 716, 729 (Tex. App.—Fort Worth 2015, no pet.). A failure of consideration occurs when the plaintiff fails to perform a condition precedent to the defendant's duty to perform. *Pagosa Oil and Gas, L.L.C. v. Marrs and Smith Partnership*, 323 S.W.3d 203, 219 (Tex. App.—El Paso 2010, pet denied); *Nat'l Bank of Commerce v. Williams*, 125 Tex. 619, 84 S.W.2d 691, 692 (Tex. 1935). To make performance specifically conditional, a term such as “if,” “provided that,” or other similar

conditional language normally must be included. *KIT Projects, LLC v. PLT Partnership*, 479 S.W.3d 519, (Tex. App.—Houston [14th Dist.] 2015, no pet.).

The Contract for Deed in this case required Bullard to pay the \$100,000 sales price for the property, including the \$20,000 cash portion of the deferred principal amount and the remaining balance of principal and interest, before the Stifflemires were required to convey the Property to Bullard. *See* (2 RR 4-5). The Contract clearly states that the Seller will convey the property to Buyer only “[i]f Buyer is not in default.” (2 RR 5). Bullard defaulted under the Contract for Deed when she failed to make the required \$20,000 payment to the Stifflemires on May 1, 1995, and did not sign a Real Estate Lien Note for the remaining balance of principal and interest due on the Property. (1 RR 20; 47). These facts clearly support the trial Court’s conclusion that the Contract for Deed lapsed on May 1, 1995, because Bullard failed to make the \$20,000 payment required under the terms of the contract. (CR 373). The failure of the consideration promised by Bullard in the Contract for Deed constitutes a bar to enforcement of that agreement. *See McGraw*, 195 S.W.3d at 276.

C. The Contract for Deed is unenforceable due to waiver.

Bullard’s acts and omissions, following her failure to make the required \$20,000 payment due under the Contract for Deed, waived her right to enforce that Contract, leading the trial court to correctly conclude that, as of May 1, 1995,

Bullard's possession of the Property was subject to a month-to-month lease. Waiver is the intentional relinquishment of a known right or intentional conduct inconsistent with claiming that right. *Furr v. Hall*, 553 S.W.2d 666 ,674 (Tex. Civ. App.—Amarillo 1977, writ ref'd n.r.e.). Waiver may be established by evidence of silence or inaction, coupled with knowledge of the known right, for such an unreasonable period of time as to indicate an intention to waive the right. *Id.*; *Alford, Meroney & Co. v. Rowe*, 619 S.W.2d 210, 213 (Tex. Civ. App.—Amarillo 1981, writ ref'd n.r.e.); *see Ford v. Culberson*, 158 Tex. 124 (1958); *Tenneco v. Enterprise Prod. Co.*, 925 S.W.2d 640, 643 (Tex. 1996). Because Bullard was aware of her rights under the Contract for Deed, and acted in a manner inconsistent with an intent to claim those rights or failed to act in a manner consistent with those rights, she is not entitled to enforcement of the Contract. *See Rowe*, 619 S.W.2d at 214 (finding partnership waived enforcement of partnership agreement's penalty provision in suit against former partner); *see Hemenway Co., Inc. v. Sequoia Pac. Realco*, 590 S.W.2d 545, 548-49 (Tex. Civ. App.—San Antonio 1979, writ ref'd n.r.e) (equipment supplier's conduct waived breach of landlord's obligation to require new tenant to assume equipment lease); *Wettstein v. Love*, 583 S.W. 471, (Tex. Civ. App.—El Paso 1979, writ ref'd n.r.e.) (landlord's acceptance of rent payments without claim for additional rent waived enforcement of lease's cost-of-living increase provision).

Bullard's comments and actions at the time that she entered into the Contract showed that she was aware of her rights and obligations under that agreement. Bullard took possession of the Property around June 1, 1994, and clearly understood that she was responsible for making any repairs she wanted done to the Property. (1 RR 19-20; 2 RR 6). Bullard understood that she was entitled to receive a deed to the Property if she made all of the payments required under the Contract. (1 RR 47). Even after Bullard defaulted on the lump sum amount payable in May, 1995, and on the payment of the balance of principal and interest due in May, 2000, Bullard continued to make monthly payments of \$643.72, through the time of trial. Bullard's failure to pay the ad valorem taxes, as required by the Contract for Deed terms, and her lack of efforts to exert any ownership interest in the minerals in the Property, were inconsistent with a claim to the Property under the Contract. According to Bullard, she waited until 2006 before ever asking the Stifflemires about obtaining a deed to the Property, to no avail, and then failed to assert any other ownership interest in the Property until filing suit in this case. Coupled with Bullard's knowledge of her rights and duties under the Contract, her silence on these matters for the unreasonably long period of twenty years, indicated Bullard's waiver of rights to the Property under the terms of the Contract for Deed, rendering the Contract unenforceable.

D. The Contract for Deed is unenforceable under the theory of estoppel.

Once she defaulted in making the \$20,000 payment due in May, 1995, and began renting the Property from the Stifflemires, Bullard changed her position with regard to the enforcement of the Contract, such that she is now estopped from asserting further claims under it. The doctrine of quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken by that party. *Eckland Consultants, Inc. v. Ryder, Stilwell, Inc.*, 176 S.W.3d 80, 87 (Tex. App.—Houston [1st Dist.] 2004, no pet.); *Atkinson Gas Co. v. Albrecht*, 878 S.W.2d 236, 240 (Tex. App.—Corpus Christi 1994, writ denied). One form of quasi-estoppel, estoppel by contract, is based upon the idea that a party to a contract cannot, to the prejudice of another, take a position inconsistent with the contract's provisions. *Freezia v. IS Storage Venture, LLC*, 474 S.W.3d 379, 387-88 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Estoppel by contract binds a party to the terms of her own contract, unless the contract is void, annulled, or set aside in some way. *Id.* As applied in this case, the theory of estoppel precluded Bullard's attempt to enforce the Contract for Deed because:

1. Bullard is now asserting or maintaining a position in connection with the Contract, under which she received a benefit;
2. Bullard's present position is inconsistent with her earlier position when she acquiesced to or received the benefit of the transaction; and

3. it would be unconscionable to allow Bullard to maintain her present position, which is to the Stifflemires' disadvantage.

See Lopez v. Munoz, Hockema & Reed, L.L.P., 22 S.W.3d 857, 864 (Tex. 2000) (setting forth elements of quasi-estoppel); *Freezia*, 474 S.W.3d at 387-88; *Eckland Consultants*, 176 S.W.3d at 87.

In May, 1995, after Bullard failed to pay the \$20,000 deferred principal portion of the purchase price, and did not sign a Real Estate Lien Note for the balance, as required under the Contract terms, she agreed to become a tenant instead of a purchaser of the Property. Bullard thereby relinquished the right to receive a Warranty Deed with Vendor's Lien and one-half of the mineral interest in the Property, and she bypassed the obligation to make a balloon payment of the remaining balance of principal and interest in May, 2000, and to pay the ad valorem taxes on the Property. This obviously created disadvantages to the Stifflemires, who were deprived of the principal and interest specified by the Contract to have been paid no later than May, 2000, while also bearing the tax liability on the Property.

Having maintained her possession of the Property for over twenty years, without paying the amounts as agreed to under the Contract, Bullard cannot now take an inconsistent position and claim that she is entitled to conveyance of the Property under the Contract provisions. Even if one believes that Bullard was

ignorant that, in 1995, she had agreed to or acquiesced to renting the Property instead of buying it, she admits that she was told in 2006 that the Stifflemires were not going to give her a deed for the Property, so she certainly knew at that time that the Contract was no longer in effect. Because Bullard did not attempt to comply with or enforce the terms of the Contract in 1995, or 2000, or 2006, and has acted inconsistently with those terms ever since, the doctrine of estoppel by contract prevents enforcement of the Contract now.

E. The Stifflemires Were Not Required to Comply With Texas Property Code Notice Requirements Once the Contract Lapsed.

The trial court found that “[w]hen Bullard failed to make the \$20,000 payment required under the Contract for Deed terms, the Stifflemires agreed to allow Bullard to remain in possession of the Property on a month-to-month lease, with rent to be paid in the amount of \$643.72 per month.” (CR 372). This was supported by Larry Stifflemire’s testimony that, since the beginning of May, 1995, Bullard was leasing the Property from the Stifflemires, at a rental rate of \$643.72 per month. After that point, neither Bullard nor the Stifflemires acted in a manner consistent with a belief that the Contract for Deed was still in effect.

Beginning in May, 1995, Bullard paid the Stifflemires \$643.72 per month for over twenty years – sixteen years longer than the May, 2000, payoff date specified in the Contract for Deed. The Stifflemires’ federal income tax returns show that they were reporting \$7,725 in rental income each year from “Rent House, Caldwell,

Texas,” corresponding to the amount of Bullard’s monthly payments. The Stifflemires paid the property taxes due on the Property from 1994 through 2016, in keeping with their ownership of the Property. Bullard never even went to the Burleson County Appraisal District to inquire about the amount of taxes owed for the Property. Even knowing that the Stifflemires had exercised rights of ownership in the Property by signing documents for a mineral lease and construction of an easement across the Property, Bullard did not seek any of the income resulting from those transactions. The conduct of Bullard and the Stifflemires in the last twenty-plus years is consistent with Bullard’s possession of the Property under a rental agreement, because the Contract for Deed had lapsed when Bullard failed to make the \$20,000 payment in May, 1995.

Because the Contract for Deed had lapsed, and Bullard was thereafter in possession of the Property under a month-to-month lease agreed to by the parties, there was no reason – in fact or law – for the Stifflemires to issue a notice to Bullard regarding the termination of the Contract for Deed. The Stifflemires did not accelerate Bullard’s indebtedness under the Contract, or cancel the Contract and attempt to collect damages from Bullard, as contemplated by the Contract terms and Section 5.064 of the Texas Property Code Property Code. *See* TEX. PROP. CODE § 5.064. Rather, Bullard and the Stifflemires proceeded under a mutual agreement for Bullard to rent the Property. Bullard’s actions and failures to act in accordance with

the Contract for Deed terms, since 1995, waived any right to claim enforcement of the notice provisions of the Contract for Deed or the Texas Property Code. For this reason, the trial court's judgment should be upheld by this court.

II. The Trial Court's Conclusion that the Contract for Deed Lapsed is Supported by the Facts Established, as a Matter of Law.

The facts cited in Section I of this brief, as reflected in the record, overwhelmingly support the trial court's judgment, and conclusively established that the Contract for Deed lapsed in May, 1995, and that Bullard acquiesced to and conducted herself in accordance with a month-to-month lease of the Property after that time. Despite Bullard's attempt to convince the court that the *Nguyen* case controls here, there are major differences between the *Nguyen* facts and those in this case. *See Chang v. Linh Nguyen*, 76 S.W.3d 365, 368 (Tex. App.—Houston [14th Dist.] 2002, no pet.) For example:

- the *Nyugen* buyers used the property at issue solely as their residence, and not for commercial operations, as well;
- the contract for deed in the *Nyugen* case did not require a large lump-sum payment early in the term of the contract;
- the *Nguyen* buyers did not fail to make a final balloon payment of principal and interest, as required by the contract;
- there was no evidence that the buyers in *Nyugen* agreed to lease the property subject to the contract, after failing to make required payments;

- the *Nyugen* sellers took affirmative action to terminate the contract; and
- the statute of frauds was pled as a bar to enforcement of the contract.

In this case, the Stifflemires took no action prior to trial to end Bullard's occupancy of the Property or to terminate the Contract; instead, the conduct of the parties indicates that the Stifflemires and Bullard considered the Contract for Deed to have lapsed when Bullard did not make the \$20,000 payment in May 1, 1995. Thereafter, Bullard continued her occupancy of the Property under a month-to-month lease. There is no evidence that either Bullard or the Stifflemires attempted to comply with the Contract for Deed terms after 1995, such that the Stifflemires would have had any reason to provide a statutory accounting notice pursuant to the Texas Property Code.

Contrary to Bullard's assertion (Appellant's Brief at 33), there is ample explanation for the trial court's judgment, other than a misapplication of law to facts. The facts support the trial court's conclusion that the Contract lapsed. Thus, this court should affirm the trial court's judgment.

III. Because the Contract Was No Longer Enforceable, Bullard Is Not Entitled to Statutory Damages under the Property Code.

Because the Contract for Deed was no longer enforceable after May 1, 1995, Bullard is not entitled to statutory damages under Section 5.077 of the Texas Property Code. *See* TEX. PROP. CODE § 5.077. By the time such a notice would

have been due to Bullard, she had already defaulted on the payment of the \$20,000 sum required under the Contract, and had begun leasing the Property instead. To the extent that the Stifflemires failed to provide an accounting notice, Bullard's cause of action would have accrued in 1995 and the statute of limitations has long ago expired. Though Larry Stifflemire admitted not providing any annual statement to Bullard pursuant to Property Code provisions, that is not the same as admitting statutory liability or stipulating to the damages that Bullard claims. The trial court correctly found that Bullard was not entitled to damages; therefore, the judgment should be upheld.

CONCLUSION AND PRAYER

As the trial court correctly found, the Contract for Deed lapsed in May, 1995, because Bullard did not provide the consideration necessary to enforce the Contract. By acting as a month-to-month tenant on the Property since then, and foregoing action to comply with the Contract terms in the intervening years, Bullard is prevented from now compelling enforcement of the Contract, due to waiver and estoppel. The established facts support the trial court's conclusions, including that Bullard is not entitled to statutory damages under provisions of the Texas Property Code. For these reasons, Appellees Rebecca Ann Stifflemire and Larry Stifflemire request that this Court affirm the judgment of the trial court, and grant any other relief to which Appellees may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The number of words in this Appellee's Brief, excluding those provisions described in Tex. R. App. P. 9.4(i)(1) is 5882. This figure is provided in reliance on the word count of the computer program used to prepare this document.

/s/ LAURA UPCHURCH
Laura Upchurch

CERTIFICATE OF SERVICE

I, Laura Upchurch, do hereby certify that on July 14, 2017, I served a true and correct copy of the foregoing pleading to the following, in accordance with the Texas Rules of Civil Procedure on:

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